

Implementation of the Hadith “al-Bayyinat al-Mudda'i wa al-Yamin 'ala Man Ankara” in the DSN MUI Fatwa on Guaranteeing Capital Returns

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Abstract: This study aims to analyze the implementation of the hadith "Al-Bayyinat 'ala Al-Mudda'i wa Al-Yamin 'ala Man Ankar" in the Fatwa of DSN MUI No: 105/DSN-MUI/X/2016 regarding the guarantee of capital return from the perspective of Maqashid Sharia. This hadith emphasizes the importance of evidence for the plaintiff and an oath for the repudiation, which is of great relevance in the context of financing and capital guarantee in the Sharia economy. Through a qualitative approach with a descriptive-analytical method, this study examines the application of the principles of the hadith in the DSN-MUI fatwa and assesses its conformity with the main objectives of sharia (maqashid sharia), namely safeguarding religion, soul, intellect, descendants, and property. The results of this research are expected to provide insight into the alignment between the implementation of fatwas and sharia principles, as well as guide practitioners in implementing contracts by sharia.

Keywords: sharia economics, fatwa dsn mui, implementation of hadith, maqashid sharia, guarantee of return on capital.

INTRODUCTION

The scholars agree that in the mudharabah, musharakah, and wakalah bil istitsmar contracts, the manager is the person who is entrusted, so he is not responsible for losses as long as it is not due to intentionality, negligence, or violation of terms/agreements. The original law is the acceptance of their words in terms of refusal of responsibility for property losses when it is not due to their intention and negligence unless the shahibul maal/capital owners can prove that there has been intentionality and negligence committed by the manager or representative of the investor [1]–[3].

This is based on the hadith of the Prophet SAW which explains the application of the accusation claim and the need for evidence for the accusation:

عَنِ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: لَوْ يُعْطَى النَّاسُ بِدَعْوَاهُمْ لَادَّعَى رِجَالٌ أَمْوَالَ قَوْمٍ وَدِمَاءَهُمْ، وَلَكِنَّ الْبَيِّنَةَ عَلَى الْمُدَّعِي، وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ.

"From Ibn 'Abbas (may Allah be pleased with him) that the Messenger of Allah (peace and blessings of Allaah be upon him) said, "If (ever) people are fulfilled with their claims, then there will certainly be those who will claim the wealth and blood of a people. However, evidence is mandatory for the accuser (accuser) and mandatory oath for the person who does not confess/defendant."

The rules of fiqh istishhab that are in line with the hadith:

الأصل بقاء ما كان على ما كان

"The original law of everything is to remain in its original state."

الأصل براءة الذمة

"The law of origin is that a person is free from dependence on the rights of others."

الأصل العدم

"The original law of all things is non-existent."

From these hadiths and rules, the scholars conclude that in muamalah, if there is a dispute between shahibul maal/investor and mudharib/manager, the qaul/defence that is considered or won is qaul mudharib and there is no obligation for him to return the capital as long as it is not proven that there has been an act of *taqshir* (not doing something that should have been done), or *ta'addi* (doing something that should not be done), or *mukhalafah asy-syuruth* (violating the terms agreed upon by the contracting parties) [4]–[6].

If we implement the law of responsibility in the current investment as conveyed by previous scholars, then there is a problem in its application. This has the potential for investment managers in LKS to commit violations in managing customer investment funds, or they are negligent in protecting the funds from the risk of loss. They are free from the law of responsibility because their testimony that has guarded and anticipated losses is considered justified testimony. Fund owners will have difficulty obtaining evidence of their intentions and negligence. Conversely, in financing transactions, where LKS plays the role of capital owner and customers/members as managers, LKS will get a great risk of loss because the manager's testimony is won as long as there is no evidence of negligence [7]–[10].

With the considerable differences caused by changes in the situation and conditions, customs and habits, regulations and laws of the current human beings, there will be great losses and damages if we continue to follow the previous fiqh laws and ignore the reality that is happening now. Lying and treacherous behaviour have become widespread and habitual, and it is very difficult to find an honest and trustworthy manager.

DSN-MUI in its fatwa No: 105/DSN-MUI/X/2016 concerning Guarantee of Capital Return for Mudharabah, Musharakah, and Wakalah Financing bil Istitsmar, in a special provision states: *"If the business suffers losses while the capital owner disagrees on the loss, the Manager is obliged to prove that the loss suffered is not due to ta'addi, tafrith or mukhalafat al-syuruth."* at first glance set the conditions that are contrary to the hadith of the Prophet and the rules that have been set by the scholars regarding the proof of a claim/accusation. This study will discuss how to implement the hadith "Al-Bayyinatu 'alal mudda'i wal Yamin 'ala man Ankara" in the fatwa of DSN MUI NO: 105/DSN-MUI/X/2016 according to the perspective of Maqashid Sharia.

LITERATURE REVIEW

The jurists agree that the original law for a mudharib is the absence of responsibility for something that falls under his authority from the property of the person who mandates him to be developed and invested in the event of damage or loss resulting from it not due to intention and negligence. This is because he manages the property with the permission and

pleasure of the owner of the property without the purpose of owning it. So, they are considered as the representative owners of assets related to authority and utilization. If there is damage and depreciation while within their authority, then it is also like damage and depreciation by the owner. If they claim that the loss of property is not due to their intention and negligence while the owner of the property claims otherwise, then the words that are won or accepted are the words of those who are entrusted with denying themselves responsibility for the damage and loss of the property as long as the shahibul mal cannot provide evidence of the intentionality and negligence of the manager. Because in principle, "A person who is trusted (mudharib) is accepted by his speech until he can get proof that he has committed intentionality and negligence" [11]–[13].

This opinion is also corroborated by Ibn Qudamah who stated, "Everyone who is entrusted such as the father, who is given a will, the judge, the partner of the Cooperation, the mudharib, the murtahin, the hired and the entrusted are all accepted as long as there is no evidence that they are negligent or exceed the limit". This is what the words of the jurists mean by the words of the jurists that "The original law is the words that are accepted are the words of the party who is entrusted with the responsibility of being entrusted with the responsibility for losses as long as it is not due to intention and negligence". Ibn al-Arabi stated in a hadith that the evidence must be presented by the accuser and that the oath for the one who denies it is the wisdom of Allah's decree for the sake of human fame. Ibn Qayyim stated that the position of the accused person has power based on the rule of bara'ah al-ashliyah with an oath being one of his weapons. The mudharib are like a person who is entrusted, a person who is represented, and a person who is bequeathed. Their words are accepted, moreover, strengthened by oaths [14]–[16].

If the rules and principles of these previous scholars are applied to today's financial institutions, where they are capital managers, then the consequence is that LKS is free from responsibility for customer assets in the event of losses only by their testimony. This is certainly far from the benefit and has a great potential to fall into the disaster because it seems to legitimize LKS to deliberately manage customer assets to get big profits. Classical fiqh related to mudharabah and other contracts in ancient times tended to be simple. So, the hadith of the Prophet (peace be upon him). This muamalah also depends on the context and reality at that time. Meanwhile, contemporary banking practices today differ in the conditions and details of the character of the contract, so it is not appropriate if the rules of that era are fully enforced in this era. It is well known that the law can change with the changing times and conditions, in the spirit of achieving the same sharia maqashid [17]–[19].

Ibn Qayyim stated that the right fatwa is the one that gathers two things. That is, the fatwa is correct according to written sharia law and must be following social reality. Because the fatwa only includes fiqh law without considering social conditions and those that apply in society, it will cause madharat that is greater than its good.

Just as a fatwa can change according to changes in time, place, and social conditions of people, all of that is part of the religion of Allah. A judge if he only masters the sharia laws, but does not know the conditions of human reality, social conditions, and indications of the state of society, then he has great potential to eliminate many rights, or he issues laws that are not appropriate in their application. So there are two fiqh that judges must have, namely fiqh on a case and fiqh on reality so that it can harmonize between the two [20]–[22].

Based on considering the maqashiq of Sharia and the existing Sharia rules, paying attention to Sharia principles, and deepening the conditions of reality that have prevailed in society, especially the contemporary banking system, the rules based on the hadith state that proof is on the accuser and the oath for those who deny in contemporary sharia muamalah needs to be changed that it is the mudharib who must

show proof that they have not committed negligence and intentionality. This is a prevention and solution so that tyranny does not occur and waste the mandate. The rule of istishab *baraatul ashliyyah* states that the law of origin of everyone is free from dependents. If the current urf that only recognition from the mudharib side is not enough is a condition in mudharabah, then the urf dalalah is stronger than *baraatul ashliyyah* because the applicable urf is the original principle. After all, it is more dominant. So mudharib according to the principle of istishab does not need to be proven as the original law requires proof [23], [24].



Figure 1. Fiqhiyyah Rules that Become Research Materials

METHODOLOGY

This study uses a qualitative method with a descriptive-analytical approach to examine the implementation of the hadith "Al-Bayyinatu 'Ala Al-Mudda'i Wa Al-Yamin 'Ala Man Ankar" in the fatwa of DSN MUI No: 105/DSN-MUI/X/2016 regarding the guarantee of capital return from the perspective of sharia maqashid. The purpose of this study is to evaluate the extent to which the fatwa is in line with the main objectives of sharia (maqashid shya), such as property protection and economic justice. Data collection was carried out through a comprehensive literature study of related literature, including hadith books, academic journals indexed by Sinta and fatwa documents as well as reports from scientific articles [25], [26].

The data obtained was analyzed using the content analysis method, where the data was categorized and interpreted to identify the main themes and the suitability of the fatwa with the sharia maqashid. The results of this analysis are expected to provide deeper insights into the application of sharia principles in contemporary fatwa and its implications for sharia business practices in Indonesia [27]–[29].

RESULTS AND DISCUSSION

How do scholars interpret the hadith al bayyinatu alal muddai wl yamin ala man ankar

Evidence must be brought in by the accuser

الْبَيِّنَةُ عَلَى الْمُدَّعِي، وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ

"Evidence must be brought in by the accuser, and the oath is mandatory for those who deny the accusation."

فِي جَمِيعِ الْحُقُوقِ وَالِدَّعَاوَى وَنَحْوِهَا

"This applies to all disputes of rights, demands, and the like."

Source of Rules

This noble rule has been mentioned by the Prophet (peace and blessings of Allaah be upon him) in one of his sayings. Where he said:

عن ابن عباس أنّ النبيّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ لَوْ يُعْطَى النَّاسُ بِدَعْوَاهُمْ لَادَّعَى قَوْمٌ دِمَاءَ قَوْمٍ وَأَمْوَالَهُمْ ، وَلَكِنَّ
الْبَيْتَةَ عَلَى الْمَدْعِي ، وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ

"From Ibn 'Abbas (may Allah be pleased with him) that the Messenger of Allah (peace and blessings of Allaah be upon him) said, if (ever) people are fulfilled with their claims, then there will certainly be those who will claim the property and blood of a people, but the evidence is obligatory for the accuser and the oath is obligatory for the person who does not confess/accuse".

Hadist above *ditakhrij* (removed) by Al-Bukhari in the book: *At-tafsir*, Bab: *Innal ladzina yasytaruuna bi 'ahdillahi wa aiimanihim tsamanan qaliilan ulailan ulaa laaika la khalaqaq lahum*. Kitab: *Ar-Rahn*, Bab: *Idzaa ikhtalafa ar-rahiin wa al-murtahin wa nahwahu fal bayyinah 'alaa al-mudda'i wa al yamin 'alaa al-mudda'a 'alaih fii al-amwaal wa al-Huduud* (nomor 2514). Kitab: *Asy-Syahadat*, Bab: *Al-yamin 'alaa al-mudda'a 'alaih fii al-amwaal wa al-huduud* (number 2668). Moreover, Abu Dawud in the book: *Al-Aqdhiyah*, Bab: *Fil yamin 'alaa alaa al mudda'a 'Alaih* (number 3619). And then At-Tirmidzi In the book: *Al-Ahkam*, Bab: *Maa jaa fii anna al bayyinah 'alaa al-Mudda'i wa al-yamin 'alaa alaa al mudda'a 'alaih*.

In his work, *Syarah Saheeh Muslim*, Imam An-Nawawi conveyed an interpretation of the hadith conveyed by the Prophet Muhammad (peace and blessings of Allaah be upon him). He elaborated that if each plaintiff gets a confession of his or her claim without sufficient evidence, this has the potential to trigger many individuals to make accusations or claims against the property and lives of others without a valid basis. To overcome this problem, the Prophet (peace and blessings of Allaah be upon him) introduced a legal principle that requires the plaintiff to provide concrete evidence (*Al-bayyinah*). Only after the evidence is presented can a plaintiff be considered correct and win the case against the defendant. On the other hand, if the plaintiff fails to present sufficient evidence, the defendant is required to take an oath. If the defendant is willing to take an oath, then he is exempt from all demands however, if the defendant refuses to take an oath, then the plaintiff's claim will be considered true. In this context, Imam An-Nawawi also reminded us about the dangers of making reckless claims against other people's property, especially in today's era where false evidence and inauthentic testimony can be easily organized by those who have power or financial resources.

Meaning of Rules

In the context of law, *Al-bayyinah* or evidence refers to an element that can verify the validity of a claim or right. This term specifically relates to the role of witnesses in various aspects of the law, including issues related to violence, finance, or other violations of the law. Islamic scholars have reached a consensus that *Al-bayyinah* refers to *ash-shahadah*, which means testimony. This is because witnesses usually base their testimony on direct observation and their presence at the scene, which allows the disclosure of truth and truthfulness regarding the parties involved. Evidence related to accusations and consequences that arise comes in various forms. In the shari'a law established by Allah Subhanahu wa Ta'ala, there are four types of evidence:

- 1). In the context of adultery law, the presence of four male witnesses is required as a condition for the validity of evidence, while testimony from women is not considered eligible. This is based on a verse said by Allah Azza wa Jalla:

وَالَّذِي يَأْتِيَنَّ الْفُحْشَةَ مِنْ نِسَائِكُمْ فَاَسْتَشْهَدُوا عَلَيْهِنَّ اَرْبَعَةً مِّنْكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّىٰ يَتَوَقَّعُنَّ الْمَوْتَ أَوْ يُجْعَلَ لَهُنَّ سَبِيلٌ ۗ

"And those women who commit heinous deeds among your women, let them have four witnesses among you" (An-Nisa 4:15).

In another verse Allah says:

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً ۗ وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا ۗ وَأُولَٰئِكَ هُمُ الْفَاسِقُونَ

"And those who accuse good women (of adultery) and they cannot bring four witnesses, then beat them eighty times, and do not accept their testimony forever. They are the wicked ones." (An-Nur 24:4)

- 2). In cases involving certain offences such as murder, theft, alcohol consumption, and accusations without evidence, which are subject to severe legal sanctions in Islamic law or hudud, the presence of at least two male witnesses is required. Testimony from women is not considered qualified in this context. This is following the words of Allah the Almighty which explains the specific requirements for this type of testimony in Islamic law.

فَإِذَا بَلَغَ الْأَجِلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوِي عَدْلٍ مِّنْكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ ذَٰلِكُمْ يُوعَظُ بِهِ مَن كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَمَن يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مَخْرَجًا

"... And witness with two just witnesses among you and establish that testimony for the sake of Allah..." (ath-Thalaq: 65/2)

Some fiqh scholars such as syâfi'iyah include in such cases rights that are not related to property matters, such as marriage, thalâq, and so on. They said: "It must be presented by two male witnesses so that the truth can be believed."

- 3). In the context of transactions related to assets, such as purchases, loans, rentals, and similar activities, there needs to be an affirmation of rights through testimony. According to the command of Allah Azza wa Jalla in the verse related to debt, this verification process requires the testimony of two men or one man and two women to certify each transaction.

وَأَسْتَشْهَدُوا شَهِيدَيْنِ مِنْ رِّجَالِكُمْ فَإِن لَّمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ ۖ وَأَمْرَأَتَانِ مِمَّن تَرْضَوْنَ مِنَ الشُّهَدَاءِ

"... And witness with two male witnesses among you. If there are no male witnesses, then it is permissible to have a man and two women among the people you like from the witnesses..." (Al-Baqarah: 2/282)

This applies only to matters of property and everything related to it. Indeed, the testimony of a woman is required by two people to occupy the place of a man, the reason is that the woman's intellect is lacking. As narrated by Imam Muslim in his authentic book.

قَالَ: "أَمَّا نَقْصَانُ عَقْلِهَا فَشَهَادَةُ امْرَأَتَيْنِ تَعْدِلُ شَهَادَةَ رَجُلٍ، فَهَذَا نَقْصَانُ الْعَقْلِ، وَتَمَكُّثُ اللَّيَالِي لَا تُصَلِّي، وَتُقَطِرُ فِي رَمَضَانَ، فَهَذَا نَقْصَانُ الدِّينِ

The Prophet Muhammad said, "As for the weakness of his intellect, the testimony of two women is balanced by the testimony of a man, this is the aspect of his weakness of intellect. And he stays silent for several nights without prayer and breaks the fast in the month of Ramadan (because of menstruation), so this aspect is the weakness of his religion."

- 4). In the context of issues specifically related to women's experiences, such as the process of birth, breastfeeding, virginity, etc., women's testimony is considered valid and sufficient without the need for confirmation from male witnesses. This is reinforced by the view of the Hanafi madhhab, which recognizes that in certain situations, a woman's testimony alone is sufficient.

عن عقبة بن الحارث رضي الله عنه مرفوعاً: أنه تزوج أم يحيى بنت أبي إهاب، فجاءت أمة سوداء، فقالت: قد أرضعتكما، فذكرت ذلك للنبي صلى الله عليه وسلم . قال: فأعرض عني. قال: فَتَنَحَّيْتُ فذكرت ذلك له. قال: كيف وقد زعمت أن قد أرضعتكما!؟

It is from 'Uqbah bin al-Haris (may Allah be pleased with him) that he married Um Yahya bint Abi Ihab. Then came a black slave girl who said, "I have nursed you both." So, I told the Prophet (peace and blessings of Allaah be upon him)." He (Uqbah) said, "he turned away from me". He (Uqbah) said again, "I approached him, and then I mentioned it to him." He said, "How (again), he confessed that he had breastfed the two of you?!".

The hadith of Uqbah bin Harith is a hadith that is hasan sahih. Some scholars from among the companions of the Prophet (peace and blessings of Allah be upon him) and others have accepted the testimony of a single woman in the matter of breastfeeding, as Ibn Abbas said that the testimony of a woman in breastfeeding is sufficient and her vow is acceptable. Similarly, Ahmad and Ishaq said, that some scholars say that the testimony of a woman alone is not enough to be more than that, and this is the opinion of Imam Shafi'i. This hadith postulates that no one testifies except one woman. But not always Al-bayyinah is a witness, it could be that Al-bayyinah is a very strong circumstance that supports one of those who sue or be prosecuted.

In the context of Islamic law, the term al-Yamin refers to an oath that is spoken in the name of Allah Almighty, as a form of proving the truth against various demands or accusations. The consensus of scholars states that a valid oath must involve mentioning the name and attributes of Allah. Related to Al-Mudda'i, this term refers to individuals who make claims or accusations that are contrary to the generally accepted reality. The individual is not required to take the matter to court unless he chooses to do so voluntarily. Meanwhile, Al-Mudda'a 'alaihi described a party whose position is strengthened by the reality recognized by the community. If the claim against him is brought to court by another party, then he is required to face the claim before a judge. If he chooses not to refute the claims directed at him, then he must accept the consequences of those claims.

There are several differences of opinion among scholars regarding the identification of al-mudda'i and al-mudda'a 'alaihi, which can be summarized into two main views.

- 1). A large number of scholars from the Maliki and Shafi'i schools believe that individuals who are based on the basic and core principles of an issue are al-mudda'a 'alaihi, while others are categorized as al-mudda'i. According to Imam al-Qarafi's view, al-mudda'i includes those who are contrary to the basic principles and recognized customs, while al-mudda'a 'alaihi includes those who are in line with the basic principles and common customs. It is based on the general principle that everyone is essentially free from their obligations and status following the law in force before.
- 2). According to the dominant view of the Hanafi and Hanbali scholars, the al-mudda'i is identified as an individual who is not obliged to take action unless there is a controversy

before the judge, while the *al-mudda'a 'alaihi* is a person who, if he ignores the issue in court, will be forced to act according to the needs of the situation.

In the context of Islamic jurisprudence, there are similarities between the two views that are often considered contradictory. The term *al-mudda'i* refers to an individual who claims something contrary to reality and generally accepted norms, but if the individual does not take the matter to court, then no lawsuit is filed against him. In contrast, *al-mudda'a 'alaihi* refers to a person whose position is strengthened by existing facts and norms. If this person does not raise an objection in court, but there is another party who brings the matter, then he is obliged to settle the matter in front of the judge. In the context of Islamic law, this principle affirms that a plaintiff is required to present concrete evidence or *bayyinah* to support his claim in a case. The lack of adequate witnesses resulted in the claim being inadmissible. Instead, the defendant can simply take a sworn oath to dismiss all allegations that are not supported by sufficient evidence from the plaintiff. An agreement on this principle has been reached among scholars, and it is considered essential not only for *qadhi* and *mufti* but also for every individual involved in the legal process.

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: إِنَّكُمْ تَخْتَصِمُونَ إِلَيَّ وَإِنَّمَا أَنَا بَشَرٌ وَلَعَلَّ بَعْضَكُمْ أَنْ يَكُونَ الْحَنُ بِحُجَّتِهِ فَأَقْضِي لَهُ عَلَى نَحْوِ مَا أَسْمَعُ مِنْهُ فَمَنْ قَضَيْتُ لَهُ مِنْ حَقِّ أَخِيهِ شَيْئًا فَإِنَّمَا أَقْطَعُ لَهُ قِطْعَةً مِنَ النَّارِ فَلَا يَأْخُذْهُ

"The Messenger of Allah (peace and blessings of Allaah be upon him) said, "Indeed, you have complained about your problems/feuds with me, and indeed I am just an ordinary man. And it could be that one of you is good at tongue-in-cheek/arguing and makes me win the case because of what I heard from him. Whoever I win the case even though it is his brother's right, then in fact I am distributing for him a share of Hell, so he should never take it." (HR. Bukhari)

Al-Nawawi added that this shows the condition of humanity, where man does not know the supernatural and secret things unless Allah reveals some of them. Thus, in the matter of the court, what is possible for others is also possible for him, namely that he judges based on what appears, while Allah regulates what is hidden, by deciding based on evidence or oath, although it may be different from the real thing. As the Prophet SAW said, *"I am commanded to fight against the people," until, "their business is with Allah."* If Allah had willed, He would have told the Prophet SAW about the secrets of both sides, so that he could judge with conviction without the need for testimony or oath, but since Allah commanded His people to follow and imitate His words, deeds, and judgments, then he would be carried out with the same rules as them so that the Ummah would have an example in this matter and feel comfortable by following the judgment based on what appears without consider the hidden.

Allah said:

وَشَدَدْنَا مُلْكَهُ وَءَاتَيْنَاهُ الْحِكْمَةَ وَفَصَّلَ الْخِطَابِ

And We gave him wisdom and wisdom in resolving disputes. (Shad: 38:20)

Several scholars interpret the concept of *fashlul khithab* (wise settlement of disputes) contained in the verse as the following principle: *"The accuser must provide evidence, while the oath is obligatory for the person who denies the accusation."* The implementation of this principle leads to the clarification of ambiguous cases and the resolution of conflicts. Therefore, *fashlul khithab* falls into this category, as it has a more extensive connotation than the principle implies.

A person who claims that the goods in the hands of others belong to him, or that there is a debt to be paid to him, or that there is an obligation that must be fulfilled by another person to him, must present evidence to support his claim. Evidence, in this context, refers to everything that can verify the veracity of the claim, with different levels of proof depending on the type of case. If the plaintiff or accuser is unable to provide evidence, then the

defendant is required to swear as a form of rejection of the accusation. Furthermore, if certain obligations have been stipulated to be fulfilled by a person, such as a debt that must be paid, and the person claims to have fulfilled them, then the basic principle says that the obligation is still his responsibility unless he can provide evidence that he has fulfilled the obligation. If no evidence is presented, it is enough for the party entitled to receive the payment to swear that the payment has not been made, and the legal decision will be in favor of the recipient.

In the context of a person claiming the right to a certain part of the waqf or inheritance, the individual must provide conclusive evidence that he or she is indeed entitled to that part. If he cannot provide evidence, then he has no right to receive a share of the waqf or inheritance. Bayyinah (evidence) in disputes regarding assets, rights, and agreements, may consist of two fair men, one man and two women, or an oath from the plaintiff along with the defendant's unwillingness to take an oath. If the asset in question belongs to the party who does not claim it as his property, then the evidence required is a detailed description by the plaintiff of the goods according to their characteristics. For example, if someone finds the found item, and then someone else claims that the item belongs to him after some time, then the plaintiff must present evidence by accurately describing the characteristics of the item. The description becomes evidence in this case if the party who owns the asset does not consider it as his own.

Application of Rules

As a practical example of the application of this principle, it can be illustrated through a situation where a husband and wife are involved in an argument over the ownership of household goods. In this case, each party claims ownership of a particular good. If the object in dispute is generally used by a man, then it can be assumed that the item belongs to the husband. On the other hand, if the item is mostly used by women, then the item is considered to belong to the wife. However, if the goods are used by both parties, then the claiming party must bring witnesses to prove their claims.

Related to the Qur'anic narrative about the Prophet Yusuf 'alaihissalam in Surah Yusuf verses 23-29, this event revolves around the request for evidence in solving the problems faced by the Prophet Yusuf A.S. This story began when the Prophet Yusuf A.S. was forcibly pushed by the king's wife into the room to lure him into adultery.

وَرَوَدَتْهُ الْمَتَّى هُوَ فِي بَيْتِهَا عَنْ نَفْسِهِ وَعَلَّقَتْ الْأَبْوَابَ وَقَالَتْ هَيْتَ لَكَ قَالَ مَعَاذَ اللَّهِ إِنَّهُ رَبِّي أَحْسَنَ مَثْوَايَ إِنَّهُ لَا يُفْلِحُ الظَّالِمُونَ

"And the woman with whom Joseph lived in his house, was eager to persuade Joseph to do his will; and the woman shut the doors and said, "Come hitch, I am ready for you." Joseph replied, "I took refuge in Allah (from the heinous deed); indeed, my Lord has blessed me to the best of my ability; Indeed, those who are unjust will not succeed". (Q.S Yusuf: 23)

In an academic scientific context, it can be said that Allah SWT has described a similar situation in the story of the Prophet Yusuf AS, where he was faced with the same temptation, indicating this is the toughest challenge for a man. The reason why the Prophet Joseph AS is described as having the same temptation is to show that the existence of such temptation is the essence of the test; Without temptation, the test would not have felt tough for the Prophet Yusuf AS.

وَلَقَدْ هَمَّتْ بِهِ وَهَمَّ بِهَا لَوْلَا أَنْ رَأَا بُرْهَانَ رَبِّهِ كَذَلِكَ لِنَصْرِفَ عَنْهُ السُّوءَ وَالْفَحْشَاءَ إِنَّهُ مِنْ عِبَادِنَا الْمُخْلَصِينَ

"And the woman was very much desirous of her, and Joseph (perhaps) had a desire for her if he had not realized the statement of his Lord. Thus (Our destiny) to keep from Joseph ungood things and vile deeds, for indeed he is from Our servants who are cleansed from all sin." (Q.S Yusuf: 24)

In the story of the Prophet Joseph, the prayer of protection that he offered to Allah proved to be effective. Thanks to her steadfast faith and deep fear of God, she successfully resisted the temptation of an unethical woman. Although the woman insisted and there was a chase to the exit, the Prophet Joseph's clothes were pulled. When he finally reached the door, the woman's husband witnessed the incident and immediately threatened to imprison Joseph, who was accused of being the perpetrator.

وَأَسْتَبَقَا الْبَابَ وَقَدَّتْ قَمِيصَهُ مِنْ دُبُرٍ وَأَلْفَيَا سَيِّدَهَا لَدَا الْبَابِ قَالَتْ مَا جَزَاءُ مَنْ أَرَادَ بِأَهْلِكَ سُوءًا إِلَّا أَنْ يُسْجَنَ أَوْ عَذَابٌ أَلِيمٌ

"And they both rushed to the door, and the woman tore Joseph's garment from behind; Then they came across the two with the woman's husband at the door. Suddenly the woman said (to her husband): There is no recompense for anyone who wants to do evil to your wife unless she is imprisoned or punished for torturing her." (Q.S Yusuf: 25)

The Prophet Joseph defended himself by asserting that the woman who tried to seduce him was the King's wife. In this context, the Prophet Joseph's defence serves as a response to the accusation against the King's wife. Evidence was then presented to support this claim. First, there is the testimony of the King's wife's family member, which is mentioned in the phrase "Wa syahida syaahidun min Ahliha," which means that a witness from her family testifies. Second, physical evidence in the form of the Prophet Joseph's clothes torn on the back, which is interpreted through the phrase "in kaana qomiishotun qodi min qubuli, fashodaqot wahuha minal kaadizibiin." This phrase implies that if the Prophet Joseph's clothes were torn on the front, then the King's wife's accusation would be proven true, and the Prophet Joseph would be considered a liar.

قَالَ هِيَ رُوَدَّتْنِي عَنْ نَفْسِي وَشَهِدَ شَاهِدٌ مِّنْ أَهْلِهَا إِنْ كَانَ قَمِيصُهُ قُدَّ مِنْ قُبُلٍ فَصَدَقَتْ وَهُوَ مِنَ الْكَاذِبِينَ

"Joseph said, "He is the one who persuaded me to want me". (Her husband was astonished to hear this) and one of the woman's family (who was with her) came forward to give her opinion saying: "If Joseph's garment is torn from the front, then the woman's accusation is true, and Joseph is the one of the liars." (Q.S Yusuf: 26)

In the next sentence of the statement of evidence, "wa in kaana qomiishotun quddi min duburin, fakadzdzabat wa huwa minahs shodiqiin," it can be interpreted that if Joseph's clothes are torn from the back, then the woman is lying, and Joseph is a righteous person."

وَإِنْ كَانَ قَمِيصُهُ قُدَّ مِنْ دُبُرٍ فَكَذَبَتْ وَهُوَ مِنَ الصَّادِقِينَ

"And if her clothes are torn from behind, then the woman is lying, and Joseph is of the righteous." (Q.S Yusuf: 27)

The final decision from the King, who also acted as a judge, was made after seeing authentic evidence of the Prophet Yusuf's clothes torn on the back. Based on this clear evidence, the king declared that his wife was at fault.

فَلَمَّا رَأَى قَمِيصَهُ قُدَّ مِنْ دُبُرٍ قَالَ إِنَّهُ مِنْ كَيْدِكُنَّ إِنَّ كَيْدَكُنَّ عَظِيمٌ

"When her husband saw Joseph's garment torn from behind, he said, "This is the deceit of you women; Indeed, your deception is very powerful." (Q.S Yusuf: 28)

The Prophet Yusuf (AS) was expected to forget the events he had experienced, while the King's wife was required to apologize for her mistakes against the Prophet Yusuf.

يُوسُفُ أَعْرِضْ عَنْ هَذَا وَاسْتَغْفِرِي لِذَنبِكِ إِنَّكِ كُنْتِ مِنَ الْخَاطِئِينَ

"O Joseph, forget this. And you (O Zulaikha), ask for forgiveness for your sins, indeed you are of the guilty." (Q.S Yusuf: 29)

The implementation of the hadith "Al-Bayyinatu 'alal mudda'i wal Yamin 'ala man Ankara" in the fatwa of DSN MUI NO: 105/DSN-MUI/X/2016 according to the perspective of maqashid sharia

In addition to borrowing with a debt system such as *Murabahah*, there is also a financing system with a cooperation scheme, namely financing with a profit-sharing system contract such as *Mudharabah*, *Mudharabah* is part of an instrument that prioritizes the principle of profit sharing (*loss sharing and profit*), so the parties bear together the unprofits and profits. *Mudharabah* is a collaboration that involves both parties in a business, namely the first party (*Shahibul mal*) as the one who submits the entire fund while the second party (*mudharib*) acts as the one who operates the business. Meanwhile, the business margin is divided between the parties, namely the parties who have entered into a *mudharabah* financing agreement. *Mudharabah* financing is a type of investment financing, namely funding in the form of capital supply for a certain period as a productive business activity.

The financing of the *mudharabah contract* of the Sharia Financial Institution (LKS) system currently uses guarantees requested from customers. We know that actually in profit-sharing contracts such as *mudharabah*, the element of "trust" or trust in the management is used. Financing by providing collateral is almost similar to providing loans with collateral, namely *rahn*. In classical jurisprudence, the guarantee contained in *mudharabah* does not have any rules that stipulate it. But in principle, if there is a loss, it will be borne by *the shahibul mal*, not *the mudharib*, this is the basis that the guarantee does not exist because the risk is borne by *the shahibul mal*. According to the Islamic perspective, property is only a trust of Allah SWT that only needs to be managed for the common good. This is the benchmark for the guarantee of capital is honesty. Ulama still disagrees about whether or not a guarantee is necessary for the financing of *the Mudharabah* contract.

The DSN-MUI fatwa regarding *Mudharabah* financing explained that the guarantee does not exist in its basic principle. However, it is permissible if it is proven *that Mudharib* has made a renegade of the agreement of the parties to what has been agreed. (Fatwa No. 7/DSNMUI/IV/2000) If the inclusion of a Guarantee is prohibited in the agreement, the investment manager in LKS has the potential to commit violations in managing the customer's investment funds, or they are negligent in protecting the funds from the risk of loss. They are free from the law of responsibility because their testimony that has guarded and anticipated losses is considered justified testimony. Fund owners will have difficulty obtaining evidence of their intentions and negligence. Or vice versa, in financing transactions, where LKS plays the role of capital owner and customers/members as managers, LKS will get a big risk of loss because the manager's testimony is won as long as there is no evidence of negligence. As the rules of fiqh say, "Evidence must be brought by the accuser, and the oath is mandatory for those who deny the accusation."

The DSN-MUI fatwas related to guarantees in the financing of *mudharabah* contracts are:

1. DSN-MUI Fatwa No.7/DSN-MUI/IV/2000 concerning *Mudharabah* Financing (*Qiradh*). In this fatwa, it is explained that to avoid the risk of default by the manager, Islamic financial institutions can ask for guarantees and *Mudharib*.
2. Fatwa No.105/DSN-MUI/2016 concerning Guarantee of Capital Return of *Mudharabah*, *Musharakah*, and *Wakalah Bil Istitsmar* Financing.

This fatwa explains that there is a guarantee for the return of capital because the funds used must be returned by the manager to the Islamic financial institution. (Fatwa No.105/DSN-MUI/2016) In determining a law that does not exist in the source of law, it is necessary to have a method used. The method or method used in determining an Islamic law is the legal *istinbath* method. One of the legal products that does not have a law in legal sources is a guarantee in the financing of *the Mudharabah contract* in Islamic banking. The Indonesia Ulema Council has established a DSN-MUI Fatwa regarding the existence of guarantees in the financing of *Mudharabah* contracts in Islamic banking.

Some of the legal considerations used regarding the existence of guarantees in the financing of *the Mudharabah* contract in Islamic banking are:

1). Law No. 21 of 2008 concerning Sharia Banking

In Article 23 concerning the feasibility of distributing funds in paragraphs 1 and 2 which reads: (1) The Sharia Bank and/or UUS must have confidence in the willingness and ability of the prospective Facility Recipient Customer to pay off all obligations on time before the Sharia Bank and/or UUS distributes funds to the Facility Recipient Customer. (2) To obtain confidence as intended in paragraph (1), the Sharia Bank and/or UUS is obliged to conduct a thorough assessment of the character, ability, capital, collateral, and business prospects of the prospective Facility Recipient Customer. (Law No. 28 of 2008 concerning Sharia Banking)

In paragraphs 1 and 2 in Article 23 of Law No.21 of 2008 concerning Sharia Banking, it can be concluded that before the disbursement of funds to customers of Islamic banks and/or Sharia Business Units (UUS), the distributor must have confidence in the willingness and ability of its prospective customers who receive financing facilities to pay off all obligations on time. To realize confidence in the ability to pay obligations, if the customer is required to submit Guarantees are commonplace in Islamic banking practices. Where in Islamic banking practice, it will be very difficult for banks to know about customers before disbursing their funds, which is mostly managers who apply for people who are not well known. Therefore, to convince the Islamic banking authorities to provide financing facilities to the managers, a guarantee is applied as an effort from the manager to give confidence to the Islamic banks.

2). Hadits

Musaddad narrated to us that 'Abdul Wahid narrated to us that Al A'masy said; we narrated before Ibrahim about the problem of pawns and deferred payments in buying and selling. So Ibrahim said: narrated to us al-Aswad from 'Aisha (may Allah be pleased with him) that the Prophet (peace and blessings of Allaah be upon him) once bought food from the Jews with a delayed payment until a specified time, to which he pledged his armour [30]–[32].

From the hadith, it is known that the Prophet SAW himself once bought some food from a Jewish merchant with a debt and he pawned his armour to the Jewish merchant as collateral for his debt. In this case, it is interpreted that there may be collateral in the form of objects in general in mortgages such as in loans receivables. This is like what the Prophet SAW did to pawn his armour. When the Prophet SAW owed the Jewish merchant up to the time determined by the parties, namely the Prophet SAW and the merchant to give confidence to the Jewish merchant that the Prophet SAW would pay his debt. So, in that case, assurance is not something new but has existed since the time of the Prophet Muhammad SAW, such as pawning the armour of the Prophet SAW. The Prophet SAW pawned his armour until the specified time this was a form of Rahn, namely debt in the form of pawning objects. The pawned object was in the form of the armour of the Prophet SAW [33]–[35].

1. DSN Fatwa No.105/DSN-MUI/X/2016 concerning Guarantee of Return of Financing Capital for *Mudharabah*, *Musyarakah*, and *Wakalah bil Istitsmar*. a. The manager is not obliged to return the business capital in full at the time of loss, except for losses due to *ta'addi* (i.e. doing something that is not allowed). *Taqshir* (not doing something that should be). *Mukhalafah al-syuruth* (violating the provisions that do not contradict the sharia agreed upon by the contracting parties). b. The owner of capital may not ask the manager to guarantee the return of capital. c. The manager may guarantee the return of capital of his own will without a request from the owner of the capital. d. The owner of the capital may ask a third party to guarantee the return of capital.

The details of the Fatwa mentioned above conclude that there is no guarantee for profit-sharing contracts such as *mudharabah* and *musharakah*, except as a guarantee for the possibility of moral hazard carried out by the contract partners. In the DSN fatwa on *mudharabah*, and on *musharakah*, it is emphasized that the guarantee (compensation) in the

two contracts is because it is a trust contract, but to anticipate the occurrence of irregularities, Sharia Financial Institutions (LKS) can withdraw the guarantee. Basically, in the trust contract, there is no guarantee because making a trust contract which is basically with trust will make it no trust. However, to anticipate forgetfulness or default, guarantees are allowed to maintain trust and as a giver of confidence. It is not a loss of trust but to increase trust, a guarantee is held [36]–[40].

2. DSN Fatwa No.07/DSN-MUI/IV/2000 concerning Mudharabah Financing (Qiradh). In principle, in mudharabah financing, there is no guarantee, but so that the mudharib does not commit irregularities, LKS can ask for a guarantee from the mudharib or a third party. This guarantee can only be disbursed if the mudharib is proven to have violated the matters that have been mutually agreed upon in the contract.

In the DSN Fatwa No.07/DSN-MUI/IV/2000 concerning mudharabah financing (Qiradh), it is indirectly stated that the guarantee (compensation) in the contract is not allowed because it is a trust contract. However, in anticipation of irregularities, Sharia Financial Institutions can withdraw guarantees. Muḍārabah and musharakah financing is a financing that is trusted. The agreement in this cooperation contract demands honesty, as well as considering fairness between the parties. Therefore, each party must maintain the interests between the parties, which means that it does not require the capital owner to ask for a guarantee from the capital manager because the management position is limited to the manager. According to the DSN-MUI Fatwa, although there is no guarantee in the profit-sharing contract, in the current context, the guarantee is needed by a prudent bank.

Based on a study, it was stated that the imposition of guarantees in muḍārabah financing contracts was carried out to avoid *character risks* from *mudharib* and this was based on the provisions in the DSN-MUI fatwa No: 105/DSN-MUI/X/2016.22 In line with that, the object of guarantee guaranteed by the customer to the bank, there are also several other urgencies, namely: maintaining the possibility of the customer to commit negligence or not seriousness in managing the financing provided by the bank to customers, providing security for all customers who hold deposits with collateral by ensuring that efforts to protect the funds they invest or deposit into related bank institutions remain safe, bring benefits to customers who want to do a business but have insufficient funds, where it is enough to have assets as collateral to apply for financing.

If viewed in the theoretical study of the permissibility of the inclusion of guarantees in the profit-sharing contract, in principle it can refer to the explanation of Hasbi as-Shiddiqi, that Islamic law can change according to the situation and conditions, as the fiqh rule "*taghayyiru al-ahkam bi taghayyiru al-Azman wa al-amkan* (the law changes with the change of time and place)". According to him, there are main postulates underlying this, namely: First, the rules in the fiqh of muamalat state that "the original law for muamalah is that all actions are allowed unless there is a proposition that prohibits it". Second, the hadith of the Prophet "You know more about your world".

In addition, in the rules of fiqh, it is also mentioned "*al-adah al-muhakamah*", that custom can be taken into consideration in the determination of the law, or generally referred to as the rule of *al-urf*. In this rule, if referring to the legal context of guarantees in profit-sharing contracts, it will be implied that guarantees and covenants that are not expressly regulated by Islam will apply the provisions of these rules. Then the concept of guarantee in profit-sharing financing is interpreted as a form of custom. As long as this custom does not contradict the existing provisions, namely "forbidding the halal, and legalizing the haram", then the application of guarantees can be justified in the context of Islamic law. This match is much more responsive to the needs of the times, where the emphasis on the formation of Islamic law must see changes in society in changes in customs that will be in line with the changes in the needs of society [41]–[44].

If viewed from the aspect of pleasure, it is clear that this contract has gone through an agreement from both parties, which means that the agreement made in this contract has realized the willingness of both parties to fulfil the clause of the contract. In addition, the parties are also fully aware that the terms in the contract are fully made to protect the interests of each party, in this case, it is not to oppress or discredit the other party, because if the requirements are made to oppress the parties involved, then the agreement will be null and void, it happens because it is contrary to sharia. In essence, Islamic banks, using the principle of freedom of contract, can make certain requirements that are part of the bank's strategy to secure business risks and shrink risks. In addition to important guarantees as a handle to reduce risks, it is also to realize mutual benefits between creditor customers. Because in Islamic law, property is one of the aspects of *dharury*, this is if it refers to *the maqashid shari'ah* that must be realized by creditors and sharia banks [45]–[47].

CONCLUSION

This study aims to analyze the implementation of the hadith "Al-Bayyinatu 'ala al-Mudda'i wa al-Yamin 'ala man ankara" in the DSN MUI Fatwa No. 105/DSN-MUI/X/2016 regarding the guarantee of capital return from the perspective of sharia maqashid. The formulation of the issues raised includes how the fatwa applies the hadith and the extent to which it is applied following the objectives of maqashid sharia, especially in protecting the interests of property and justice in financial transactions. The results of the discussion show that this fatwa has accommodated the principles of sharia maqashid by providing a fair and transparent guarantee mechanism to protect the rights of investors. However, this study has limitations, including the lack of empirical data that supports a direct evaluation of the effectiveness of fatwas in the field. Therefore, it is recommended to conduct further research involving field studies to explore the practical impact of this fatwa as well as its application in a broader context. The contribution of this research lies in the in-depth understanding of the application of hadith in the fatwa of DSN MUI and can be a reference for further research in exploring the implementation of Islamic law in modern financial practices.

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Author Contribution

All authors contribute equally to the publication of this paper, all authors read and agree to this paper, and all authors declare no conflict of interest.

Conflicts of Interest

All authors declare no conflict of interest.

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